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**EXAMINER**

GRING, N

ART UNIT

PAPER NUMBER

3306

2

Claims Actions - 35 USC § 102 DATE MAILED:

11/19/97

This is a communication from the examiner in charge of your application.  
**COMMISSIONER OF PATENTS AND TRADEMARKS**  
 U.S. DEPARTMENT OF COMMERCE

A person may be entitled to a demand for costs.

- ☒ Responsive to communication(s) filed on 11/12/96
- ☐ This action is FINAL
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213, being anticipated by Nishizaki et

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-11 is/are pending in the application.
- ☐ Of the above, claim(s) 1-11 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-4, 6, 7, 9, 10 is/are rejected.
- ☒ Claim(s) 5, 8, 11 is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s): 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

**– SEE OFFICE ACTION ON THE FOLLOWING PAGES –**

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Niezink et al.

Niezink et al. discloses a implanter apparatus with a liquid reservoir (11), conduit (8) and means for dispensing in pump (12).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 3, 4, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niezink et al..

Niezink et al. discloses the invention substantially as claimed except for a specifically defined spray tip. Where conduit (8) enters passage (7) which in turn enters bore (9) a nozzle or spray tip effect is achieved due to the differences in diameter of the passages thus allowing for the dispensing of the fluid into the needle of the device.

***Allowable Subject Matter***

5. Claims 5, 8 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Kent Gring whose telephone number is (703) 308-2214. The examiner can normally be reached on Monday - Friday from 9:00 a.m to 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached on (703)408-0858 . The fax phone number for this Group is (703) 308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

  
N. Kent Gung

November 4, 1997